

Message

From: Orme-Zavaleta, Jennifer [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=3C5A111DC377411595E5B24B5D96146B-ORME-ZAVALITA, JENNIFER]
Sent: 2/5/2021 12:29:19 AM
To: Blackburn, Elizabeth [Blackburn.Elizabeth@epa.gov]
Subject: Re: Morning News Clips, February 4, 2021

I am getting them now. Thanks!!

Jennifer Orme-Zavaleta, PhD
Acting Assistant Administrator and
Principal Deputy Assistant Administrator
Office of Research and Development
US EPA
Office of Research and Development
Cell. 503-546-1234
Sent from my iPhone

On Feb 4, 2021, at 7:23 PM, Blackburn, Elizabeth <Blackburn.Elizabeth@epa.gov> wrote:

I hope you're getting these now. Nice little article on the ST rule highlighted below. Also a nice little bit on Chris F.

Liz Blackburn (she/her/hers)
Chief of Staff
EPA Office of Research and Development
202-564-2192
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<image002.png>

From: Daguiard, Robert <Daguiard.Robert@epa.gov>
Sent: Thursday, February 4, 2021 12:17 PM
To: AO OPA OMR CLIPS <AO_OPA_OMR_CLIPS@epa.gov>
Subject: Morning News Clips, February 4, 2021

Grist - In North Carolina, EPA nominee Michael Regan opened his door to activists — and industry

<https://grist.org/politics/michael-regan-epa-north-carolina-environmental-justice/>

By Adam Mahoney on Feb 3, 2021

Joe Biden has said that he wants to put America “back in the business of leading the world on climate change.” On the campaign trail last year, he touted a \$2 trillion clean energy recovery plan, and during his first days in office he debuted a slew of environmental executive actions. Biden has also indicated that he believes “leading the world on climate change” involves centering environmental justice — the disproportionate burden that pollution and climate change present to low-income communities and people of color.

Many of the administration's environmental justice efforts will likely pass through Michael Regan, Biden's nominee to head the Environmental Protection Agency, or EPA. Regan, who is currently secretary of North Carolina's Department of Environmental Quality, or DEQ, will face questions before the Senate on Wednesday, in advance of his confirmation vote.

Regan, who is also a former EPA official for the Clinton and Bush administrations, is poised to become the first Black man to run the EPA. He'll have his work cut out for him, inheriting an agency whose authority has been diminished by the Trump administration's relentless regulatory rollbacks and an exodus of career staffers due to a decline in agency morale.

Regan outlasted Mary Nichols, the previous frontrunner to lead Biden's EPA, primarily because he received more support from progressive leaders and environmental justice advocates. This support rested largely on Regan's record at North Carolina's DEQ, where he created the state's first Environmental Justice and Equity Board, a community advisory body intended to give underrepresented state residents a voice in environmental law enforcement.

Advocates who worked with Regan around that effort told Grist that he changed the state's culture around environmental justice by opening his doors to ordinary North Carolinians, regularly holding conversations with residents of communities near toxic sites, and prioritizing economic and environmental rejuvenation for areas facing high levels of pollution. For some advocates, however, Regan's positive work was sometimes overshadowed by his apparent deference to high-polluting industries that North Carolina political leaders saw as key pillars of the state's economy.

This balancing act is captured in a new analysis from the Environmental Data and Governance Initiative, or EDGI, a nongovernmental organization that advocates for the transparent provision of federal environmental data. EDGI's analysis of the North Carolina DEQ's enforcement actions, monetary penalties, and facility inspections found that Regan's DEQ completed double the amount of inspections and levied hundreds of thousands of dollars more in penalties than his Republican predecessor. However, the number of enforcement actions, in which the department writes formal notices and administrative orders intended to actually remedy violations, remained about the same during both administrations.

"[DEQ] started doing a lot more inspections, which is really important because it's a key way in which violations of protection laws like the Clean Water and Clean Air Act are found. But we didn't see huge turnaround with enforcement," said Eric Nost, an EDGI researcher and assistant professor at the University of Guelph in Canada.

Nevertheless, environmental advocates in North Carolina told Grist that Regan has been a coalition-builder who's made participation in the state's regulatory process more democratic.

"The first thing I have to say is that, prior to Secretary Reagan becoming the head of the Department of Environmental Quality, there was no relationship between the agency and communities in North Carolina," said Naeema Muhammed, one of 16 inaugural members of the Environmental Justice and Equity Board that Regan started. "We didn't get a real voice until he came into office."

The decommissioned Duke Energy coal-fired steam station in Eden, NC, was the source of a 2014 coal ash spill. John D. Simmons / Charlotte Observer / Tribune News Service via Getty Images
Regan, whose own interest in environmental justice began after an asthma diagnosis as a child, used this community-centered approach while leading the DEQ in negotiations that resulted in the cleanup of the Cape Fear River, which had been contaminated with dangerous per- and polyfluoroalkyl substances (the so-called "forever chemicals" known by the acronym PFAS). He

used a similar tack to reach a settlement with the utility Duke Energy that led to the largest coal ash cleanup in the United States.

President Biden hopes to mimic Regan's equity work on a national level by creating an environmental and climate justice division within the Justice Department to "hold corporate executives personally accountable" for exposing workers and communities to pollution. He also plans to elevate the EPA's Environmental Justice Advisory Council, which provides advice and recommendations to the head of the EPA, to a White House entity reporting to the White House Council on Environmental Quality. That would give the council, which is composed of dozens of stakeholders from various industries, schools, and community groups, a direct relationship with the President.

Despite the DEQ's community-centered outreach, however, Regan's work in North Carolina also raised red flags for some advocates who claim that he sometimes favored industry over public health.

Lisa Ramsden, a Greenpeace senior climate campaigner in North Carolina, said that Regan developed a "mixed record on environmental justice issues" by failing to protect communities from the health impacts of living near hog farms, which are major polluters in the state. She also cited his approval of many operating permits for carbon-intensive wood pellet mills, which can emit harmful pollutants like particulate matter and nitrogen oxides. One 2018 study found that every wood pellet mill in North and South Carolina was located in a low-income community of color; in North Carolina the facilities are concentrated in the rural northeastern corner of the state.

"Going forward, Regan and the rest of the Biden-Harris administration need to pair their lofty rhetoric on environmental justice with consistent action," said Ramsden. (The Biden-Harris administration did not respond to Grist's requests for comment.)

A logging truck enters a wood pellet plant in Ahoskie, NC. Joby Warrick / The Washington Post via Getty Images

Elizabeth Haddix, a managing attorney at the Lawyers' Committee for Civil Rights Under Law, concurred with Ramsden. She faulted Regan for renewing permits allowing hog farms to use older manure management systems that often lead to liquefied manure flowing over into nearby waterways.

Haddix was a lead attorney in a lawsuit against Regan's DEQ, alleging that the state's general permitting process for hog farms disproportionately burdened communities of color, which are more likely to be concentrated around the farms. The settlement required that the DEQ implement at least one year of ambient air quality and surface water monitoring in and around Duplin County, the region most heavily affected by pollution from swine waste. It also mandated that the DEQ publish an annual report with data from hog farm activity about the number of community complaints, DEQ investigations, and resolutions or fines levied.

The day after the lawsuit was settled, Regan announced the formation of the Environmental Justice and Equity Board, marking the start of a more community-centered approach to the agency's work, in some advocates' eyes. Nevertheless, the permits allowing hog farmers to continue using older and more polluting waste management systems continued.

"When we asked his agency to deny permits to facilities using this system, which were located in communities that are predominantly people of color, he told us that he couldn't," Haddix told Grist.

Instead of canceling permits, Regan has fined several farms for hundreds of thousands of dollars cumulatively for pollution in the year since the lawsuit concluded. Though he recently dropped a

\$90,000 fine on a polluting hog farm — the biggest fine for a North Carolina hog farm since 2012 — hog industry representatives publicly applauded Regan’s nomination to head the EPA and thanked him for supporting the industry.

“We look forward to working with him on issues of importance to U.S. pork producers, as we continue to produce the highest-quality, most affordable, and nutritious protein in the world,” said National Pork Producers Council President Howard Roth in a public statement.

Haddix believes that Regan’s friendly relationship with hog farmers was a result of their economic importance to the state: The industry employs nearly 20,000 people. She hopes he’ll “stand in his boots and take the courageous positions” in his new position.

Muhammed agreed, and she emphasized that the fight for environmental justice in North Carolina began before Regan and will continue after he’s gone.

“We’re still having meetings with [DEQ] about permits where they are not considering the cumulative impact, as well as the disproportionate impact on environmental justice communities,” she said. “We just have to get them to understand that enough is enough. If somebody already owns five toxic sites, why do they need a sixth?”

Overall, Muhammed is pleased with Regan’s transformation of the DEQ and is excited to see equity and justice being valued by national leaders.

“There’s got to be some teeth to the leadership and changemakers over at the EPA for them to be able to make the decisions that we’ll need to protect the people and environment in this country,” she added. “[Regan] is well-able to do the job, and we in North Carolina are excited for him.”

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NC State News - Frey Selected for EPA Science Policy Post

<https://news.ncsu.edu/2021/02/frey-epa-appointment/>

February 3, 2021

blue sky

FOR IMMEDIATE RELEASE

Matt Shipman

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North Carolina State University engineering professor Chris Frey has been appointed Deputy Assistant Administrator for Science Policy in the U.S. Environmental Protection Agency’s Office of Research and Development.

The Office of Research and Development is the scientific research arm of EPA. Its research informs EPA decisions and supports the emerging needs of EPA stakeholders, including state, tribal, and community partners.

Frey is the Glenn E. and Phyllis J. Futrell Distinguished University Professor in NC State’s Department of Civil, Construction, and Environmental Engineering (CCEE). His research includes measurement and modeling of human exposure to air pollution, measurement and modeling of vehicle emissions, probabilistic and sensitivity analysis methods, and probabilistic assessment of power generation environmental technologies. Frey will be taking a leave of absence from NC State during his tenure at EPA.

“Chris is a great choice to serve in EPA’s Office of Research and Development,” says Morton Barlaz, professor and head of the CCEE department. “He has a demonstrated track record of leadership in developing science-based recommendations for environmental policy as part of EPA’s Science Advisory Board. It is an honor to have one of our faculty selected for such an important public service position.”

Frey’s track record at EPA includes serving as member of the agency’s Clean Air Scientific Advisory Committee (CASAC) from 2008-2012; as chair of CASAC from 2012-2015; and as a member of the EPA Science Advisory Board from 2012-2018.

In 2018 and 2019, Frey played a role in convening an independent panel of experts to review science related to EPA’s assessment of the National Ambient Air Quality Standard for particulate matter.

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WOSU - Activists Petition The Environmental Protection Agency To Clean Up The Ohio River

<https://radio.wosu.org/post/activists-petition-environmental-protection-agency-clean-ohio-river#stream/0>

By CHRIS WELTER • 14 HOURS AGO

Activists recently petitioned the Environmental Protection Agency to clean up the Ohio River.

The petition calls for federally mandated numeric water quality standards. The nine groups say standards would reduce the amount of nutrients like nitrogen and phosphorus that are discharged into the Ohio River. Those chemicals can cause harmful algal blooms that affect drinking water. Attorney Hank Graddy is the Chair of the Sierra Club’s Kentucky Water Team. He says algal blooms can also harm the economy of cities along the river.

“With the 2019 algae blooms, from an economic point of view, a paddle event in Cincinnati was canceled.” He said, “and the city of Louisville lost one of the legs of their Ironman competition, which may put in jeopardy the men’s competition coming back to Louisville.”

Since the Biden administration took office last month, there is renewed hope among environmental groups that increased federal regulation is coming.

Environmental reporter Chris Welter is a corps member with Report for America, a national service program that places journalists into local newsrooms.

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Science: Death of EPA’s controversial ‘censored science’ rule delights researchers

<https://www.sciencemag.org/news/2021/02/death-epa-s-controversial-censored-science-rule-delights-researchers>

By David Malakoff

Feb. 3, 2021 , 11:00 AM

Science and environmental groups are celebrating triumph in their nearly decadelong battle against efforts to limit the kinds of scientific evidence that the Environmental Protection Agency (EPA) can use in writing new regulations.

A federal judge this week killed a controversial rule, issued late in former President Donald Trump’s administration, that would have allowed EPA to ignore or downplay data from human health studies resting on confidential medical information that is difficult to make public. The agency has long

relied on such nonpublic data in developing new regulations to limit air and water pollution or reduce exposure to toxic substances such as workplace chemicals and cigarette smoke. Conservatives and some companies had long pushed to restrict the practice. But the Trump administration's bid to do so violated procedural rules, ruled Judge Brian Morris of the U.S. District Court of Montana in a lawsuit brought by three environmental groups.

The 1 February ruling, which President Joe Biden's administration has welcomed, "is fantastic news. ... I think this puts a stake through the rule's heart," says Andrew Rosenberg, director of the Center for Science and Democracy at the Union of Concerned Scientists, which helped lead the opposition to the rule. "It was a terrible, unjustified idea that never should have plagued us for so long, and the judge recognized that."

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The Trump rule, issued 5 January, marked the culmination of a long-standing effort by industry groups and Republicans in Congress. One early goal was to prevent regulatory agencies from using data indicating harm from exposure to second-hand cigarette smoke. The focus later shifted to data collected during large, multicity epidemiological studies that revealed the health toll of air pollutants, particularly tiny particles produced by the burning of fossil fuels. These studies included detailed data about specific people—such as medical records—that could not be released to the public because of privacy and legal concerns. Industry groups and their allies argued that limitation meant outside groups could not adequately review or replicate the studies. They launched an array of legal and legislative campaigns designed to force agencies and researchers to divulge confidential data, and to prevent federal regulators from using what they dubbed "secret science."

Those campaigns, however, often ended in failure. Even when Republicans controlled Congress, for example, backers of secret science bills failed to attract enough support to enact them into law. But their efforts gained new life when Trump took office in 2017. His EPA appointees began an internal effort to write a new policy—which they called a "transparency" policy—that would bar the agency from using data that were not publicly available.

Those efforts quickly faced complications and fierce opposition. For example, both agency staff and industry officials reviewing early drafts of the proposal raised concerns that it would have unintended consequences for companies, perhaps barring EPA from using confidential industry-generated data needed to approve new pesticides and industrial chemicals. Many firms did not want to be forced to divulge what they consider to be trade secrets.

Science advocacy and environmental groups, meanwhile, began an intensive campaign against what they called the "censored science" rule. It was little more than a thinly veiled attempt to "help big polluters avoid regulations that protect human health," the American Thoracic Society, a medical group, warned at the time. A draft transparency rule EPA released in 2018 drew more than 500,000 comments expressing concerns. Even other federal agencies, including the Department of Defense, worried the rule might affect their ability to protect the environment and human health and would be costly to implement.

In March 2020, EPA released a revised version that attempted to sidestep much of the criticism. Opponents, however, argued it was even worse than the original. In particular, they asserted that it greatly expanded the kinds of research affected by the rule, and gave EPA officials far greater discretion in deciding what kinds of findings the agency could and could not use.

Once again, EPA received a cascade of critical comments. But the agency largely ignored that input when it released the final version early last month. And many critics argued the agency made questionable legal claims in asserting it could impose the policy immediately, before the new administration took power, without the usual 30-day waiting period for new regulations. In essence, EPA argued the policy simply spelled out internal “housekeeping” measures, so it was exempt from the procedural requirements and from review by Congress.

Three groups—the Environmental Defense Fund (EDF), the Montana Environmental Information Center, and Citizens for Clean Energy—immediately went to court to challenge EPA’s claims. On 27 January, they won a preliminary skirmish when Morris delayed implementation of the policy until 5 February, giving him time to consider other aspects of the case. On Monday, 1 day after the Biden administration signaled it was siding with the environmental groups, Morris went further, ruling that EPA had no legal authority to issue the policy. The agency “lacked authorization to promulgate the rule pursuant to its housekeeping authority, which is the only source of authority [it] identified,” Morris wrote.

Opponents were jubilant. The “censored science rule was a flagrantly unlawful attempt to restrict EPA from using important scientific studies,” said EDF senior attorney Benjamin Levitan in a statement. “We’re glad the court recognized that and put a stop to it.”

Technically, the policy has been vacated and returned to EPA for another rewrite. But that’s unlikely to happen within the next 4 years: EPA spokesperson Lindsay Hamilton told The Washington Post the Biden administration has already signaled it has no interest in limiting the ability of federal agencies to use “the best available science.”

Still, some supporters of the Trump rule hope the Biden administration will preserve elements of the rule. “The decision is unfortunate but does not change the goal of the science transparency rule, which I would urge the new administration to support: Enhance the public trust in agency actions and improve regulatory outcomes,” Mandy Gunasekara, who was a senior EPA official under Trump, told the Post.

Rosenberg, for one, says it’s hard to believe the saga is truly over for now. In the past few years, he’s trekked to Capitol Hill at least three times to testify before Congress against the policy, and has spent countless hours helping organize the opposition. “It’s been such a zombie proposal, it’s just gone on, and on, and on,” he says. “So, I’m always worried it will rise again.”

But he also says the Montana decision “shows the power of science advocacy.” The EPA policy was technical and relatively obscure, Rosenberg notes, “and could have just slipped by. ... But by being engaged and speaking out, even when it seemed like nobody was listening, [the research community] made a difference. Without that, it would have been much tougher to make the case that this was misguided. I mean, in the middle of a pandemic, we’re arguing over whether epidemiological evidence is worthy of consideration? Really?

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National Law Review - TRANSITION THOUGHTS: How Will President Biden’s Elevation of Environmental Justice Within the EPA Affect Your Permitted Facility or Redevelopment Project?

<https://www.natlawreview.com/article/transition-thoughts-how-will-president-biden-s-elevation-environmental-justice>

Wednesday, February 3, 2021

The Biden administration continues to make many major environmental policy actions aimed at climate change, enforcement, and several other issues. GT continues to track these changes in key areas on our E2 Law Blog, including this one on environmental justice through our “Transition Thoughts” series.

President Joe Biden is expected to sign an executive order that will elevate environmental justice within the U.S. Environmental Protection Agency (EPA) by establishing two environmental groups: The White House Environmental Justice Advisory Council and the White House Environmental Justice Interagency Council. Both groups are expected to report to the Chair of the White House Council on Environmental Quality, which will report directly to the president. The two groups will revisit the Executive Order 12898 on environmental justice, signed in 1994 by former President Bill Clinton.

As you may recall from my previous posts, Executive Order 12898 does not create any legal cause of action; however, it does weave environmental justice awareness throughout the federal government, requiring EPA to consider how its siting, permitting, and enforcement decisions impact the health of poor people and people of color. The regulated community should expect an overhaul of the EPA’s External Civil Rights Compliance Office and a prioritization of investigations of complaints under Title VI of the 1964 Civil Rights Act by “fenceline communities,” those minority and poor communities located adjacent to pollution sources.

Regarding the EPA cleanup and redevelopment programs such as the Brownfields, Superfund, and RCRA programs, businesses should expect EPA to create regulatory incentives to promote more equitable distribution of economic benefits in minority and low-income communities where cleanup and redevelopment projects are proposed. In addition to economic benefits, EPA will have a renewed focus on enforcement of environmental cleanup standards and regulations within poor and minority communities.

Industry should also expect a “reboot” of the EPA’s EJSCREEN tool, which is an EPA internet database, readily available to the public, that identifies communities living proximately to multiple, permitted pollution sources. Business can access this tool to identify “fenceline communities” located adjacent to existing or proposed permitted facilities such as manufacturing facilities, gas stations, power plants, paper mills, and other permitted operations that are sources of permitted air and water pollution.

Finally, the regulated community should expect to see more state legislation focused on environmental justice and siting decisions such as in New Jersey and proposed federal environmental justice legislation to reinstitute Title VI private right of action written out in the United States Supreme Court’s 2001 decision in *Alexander v. Sandoval*. Prudent businesses should take certain precautionary actions now to prepare for the potential impact of state and federal environmental justice policy on permitted facilities and redevelopment projects.

Best, R.

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